

Letter of Findings: 04-20110434
Use Tax
For the 2008 Tax Year

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Use Tax—Agricultural Equipment Exemption.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-2; [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-4](#); Sales Tax Information Bulletin 9 (August 2008).

Taxpayer protests the imposition of use tax on agricultural equipment.

STATEMENT OF FACTS

Taxpayer is an Indiana resident. Pursuant to an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed use tax and interest on the purchase of farm equipment for the 2008 tax year. The Department determined that Taxpayer uses the equipment in an exempt manner 55 percent of the time and in a non-exempt manner 45 percent of the time. The Department assessed use tax and interest on 45 percent of the purchase price to reflect the 55 percent tax exemption. Taxpayer protested the imposition of use tax because Taxpayer believes the equipment is 100 percent exempt. An administrative hearing was conducted, and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax—Agricultural Equipment Exemption.

DISCUSSION

After an audit, the Department assessed Taxpayer use tax and interest for the 2008 tax year on 45 percent of the purchase price of a John Deere 4120 compact tractor with a loader and backhoe, and a John Deere 673 farm loader. Taxpayer protested the imposition of use tax and interest on the transactions because Taxpayer believes the equipment is 100 percent exempt. As a threshold matter, all tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c).

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction.

IC § 6-2.5-5-2, states an exemption for agricultural machinery:

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.
- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
 - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

[45 IAC 2.2-5-4](#) states:

- (a) Agricultural exemption certificates may be used only if the purchaser is occupationally engaged in the business of producing food or commodities for human, animal, or poultry consumption for sale or for further use in such production.

(b) The department has determined that persons occupationally engaged in producing food and commodities as used in the Indiana sales and use tax act, shall mean and include only those persons, partnerships, or corporations whose intention it is to operate a farm at a profit and not those persons who intend to operate a farm for pleasure as a hobby. Operations similar to those of a pony farm, riding stable, or the production and raising of dogs and pets, are not classified as farms for the purpose of the state gross retail tax act.

[...]

(d) Each of the following items is considered exempt from the sales tax ONLY when the purchaser is occupationally engaged in agricultural production and uses the items directly in direct production of agricultural products.

EXEMPT TRANSACTIONS

(1) Livestock and poultry sold for raising food for human consumption and breeding stock for such purposes.

(2) Feed and medicines sold for livestock and poultry described in Item (1).

(3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.

(4) Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.

(5) Milking machines, filters, strainers, and aerators.

(6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.

(7) Grease and repair parts necessary for the servicing of exempt equipment.

(8) Containers used to package farm products for sale.

(9) Equipment designed to haul animal waste.

(10) Equipment such as needles, syringes, and vaccine pumps.

(e) The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

(f) If a farmer makes a purchase tax exempt and later determines that the purchase should have been taxable, a use tax is due on the purchase price and should be remitted to the department of revenue along with the next annual income tax return, except for sales tax on gasoline which must be shown on the claim for motor fuel tax refund.

In other words, the equipment must be used directly in the direct production of agricultural products (referred to also as the "double direct test") to be exempt from sales or use tax.

Upon request by the Department, Taxpayer filed a Form AGQ-100 with the Department to indicate the manner in which Taxpayer uses the equipment. Taxpayer indicated seven different uses of the equipment.

Once a month, Taxpayer uses the equipment to haul animal waste. This activity is explicitly listed above as exempt.

Every day, Taxpayer hauls feed to livestock that are to be sold for slaughter and twice a week Taxpayer grinds feed for the livestock. These activities are also exempt. Sales Tax Information Bulletin 9 (August 2008), 20080827 Ind. Reg. 045080655NRA, states that machinery, tools, and equipment used in feeding livestock for the direct production of food for sale – by a person occupationally engaged in the production of food – is exempt.

Also, Taxpayer stated that the equipment is used every day to check on livestock, once a month to check the fencing and clean the barns, and once a month to fix waterlines. These activities may be necessary to farming, but they do not meet the "double direct" test. These activities are not directly in the direct production of agricultural products.

By adding up all the days indicated by Taxpayer on the Form AGQ-100, the Department came to a total of 882 uses of the equipment a year. The uses that are exempt from tax equates to 481 exempt uses a year. These calculations show that the equipment is used in an exempt manner 55 percent of the time.

Therefore, since sales tax was not paid at the time of purchase, use tax is due on 45 percent of the purchase price. The imposition of use tax on 45 percent of the purchase price of the equipment was proper.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 09/26/2012 by Legislative Services Agency

An [html](#) version of this document.